

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DOMINICK LEE GAULTNEY,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TODD ADAMS,

Respondent-Appellant.

UNPUBLISHED

February 1, 2007

No. 270978

Oceana Circuit Court

Family Division

LC No. 04-004721-NA

Before: Sawyer, P.J., and Neff and White, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (j).¹ We affirm.

In order to terminate parental rights, the trial court must find that at least one statutory ground has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review the trial court's findings that a ground for termination has been established and the court's decision regarding the child's best interest under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, *supra* at 356-357.

Respondent contends that the court erred in terminating his parental rights because the evidence demonstrated that he had complied with virtually all of the requirements of his parent-agency agreement, which the court disregarded. The court instead focused on a single event—respondent's positive marijuana test in January 2006, to find grounds for termination. We disagree that the court relied solely on respondent's one relapse in terminating respondent's parental rights.

The child was originally made a court ward in October 2004 when his mother's drug use resulted in neglect. Respondent father was not named a respondent at that time, and the child

¹ The child's mother's parental rights were terminated at a prior proceeding.

was placed in his care with DHS² supervision; however, because of known concerns with respondent's substance abuse, a condition of placement was that respondent was to remain alcohol and drug free.

In January 2005, the child was removed from respondent's custody when a visit to respondent's home by a protective services worker and a narcotics detective disclosed that respondent was using drugs and was not providing proper care for the child. During the visit, respondent was incoherent, and exhibited "strange behaviors such as repeatedly falling asleep during conversation when waking up, vomiting, repeated questions and appearing to be disoriented—such as trying to vomit in the dryer vent." Marijuana, a bong, and other drug paraphernalia were found on the floor of the living room. The child was sleeping on the living room couch, was not dressed, and had missed the school bus. Respondent was taken to the hospital and tested positive for THC (marijuana), tricyc antidepressants, methadone, and opiate/morphine.

Based on the circumstances in January 2005, a petition naming respondent father as a respondent was filed in February 2005, and the child was placed in foster care. An updated service agreement was developed addressing respondent's substance abuse. The plan required that respondent "not use alcohol or any illicit substances." During the time that the child was in foster care, respondent failed to remain alcohol and drug free, as required for reunification. Respondent had used marijuana in August 2005, and he tested positive for marijuana on January 7, 2006, when the protective services worker and a sheriff's officer went to respondent's home to perform a random drug screen.

In rendering its decision, the court noted that respondent knew that he would be randomly tested for the use of drugs and that his parental rights may be terminated if he did not overcome his addiction to marijuana. Further, although nearly a year had passed since the initial disposition removing the child from respondent's custody, the conditions that caused the child to be removed had not been rectified. We find no clear error in the trial court's determination that the conditions that led to adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i); *In re Trejo, supra* at 356-357.

The evidence also established grounds for termination under MCL 712A.19b(3)(j) (reasonable likelihood that the child would be harmed if returned to the parent's home). The court found that respondent's past history of drug use, irresponsible behavior, and poor judgment compelled a conclusion that the child would suffer harm if reunited with respondent. We find no clear error in this determination based on the record.

Respondent argues that even if a statutory basis for termination existed, termination was clearly not in the child's best interests. *In re Trejo, supra* at 356-357. Respondent contends that there was evidence that his bond with the child was "very strong," and that the court impermissibly compared the child's foster home with that of respondent's home in determining

² Department of Human Services

whether termination was in the child's best interests, which is prohibited in a child protective proceeding. *In re Hamlet (After Remand)*, 225 Mich App 505, 520; 571 NW2d 750 (1997), overruled on other grounds *In re Trejo, supra* at 353 n 10.

In its decision, the court did note that the record established that the child, at age six, had various physical and social problems after being with his father for several months and that the child was thriving in foster care. However, we cannot conclude that the court relied on an impermissible comparison with the foster home in considering the child's best interest. *In re Hamlet, supra* at 520.

The trial court considered the best interests issue at length in its written opinion. The court noted that even though respondent was well-intentioned and eager to be given another chance for reunification while he continued to work on overcoming his marijuana addiction, respondent's desire to be reunited with his son did not outweigh the child's need for permanency and stability. The court observed that the child had been in foster care for 15 months, that respondent had not kept his past promises to abstain from using illicit drugs, that future relapses were likely, and that a postponement of the termination would only exacerbate the child's lack of stability and permanency. On the basis of the testimony and evidence, the court determined that it could not conclude that it was clearly in the best interest of the child not to terminate respondent's parental rights.

The trial court's reasoning is sound and supported by the record. The best interest provision provides the court an opportunity to find that termination is clearly not in the child's best interest; the primary beneficiary of this opportunity is intended to be the child. *In re Trejo, supra* at 356. We find no clear error. *Id.* at 357.

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Helene N. White